

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION**

**KATHLEEN KITTERMAN, ANNA CRONIN,  
CORRIE BALL, MARVIN BALL,  
MARGARET BROGAN and EVAN JONES,**

**Plaintiffs,**

**v.**

**Case No. 2:12cv146**

**CLAUDIO TOVAR-GUZMAN,  
FORTINO GARCIA AND SONS HARVESTING, INC.  
and KUZZENS, INC.,**

**Defendants.**

**ANSWER TO SECOND AMENDED COMPLAINT**

Kuzzens, Inc. (“Kuzzens”), by counsel, for its answer to the second amended complaint states as follows:

1. For its response to paragraphs 1 - 25 of the second amended complaint, Kuzzens adopts its responses to paragraphs 1- 25 of the amended complaint set forth in its previously filed answer.
2. In response to paragraph 26, this defendant admits that the bus was owned by defendant Fortino Garcia and Sons Harvesting, Inc., and that Fortino Garcia was a crew leader hired pursuant to an independent contractor agreement with LFC Agricultural Services, Inc. To the extent that the averments of paragraph 26 are inconsistent therewith, they are denied.
3. In response to paragraph 27, this defendant admits that defendant Tovar-Guzman was employed by LFC Agricultural Services, Inc., to work on various farms, including Kuzzens’ farms, but denies that he was employed by LFC Agricultural Services, Inc. or Kuzzens at the time of the accident.

4. The averments of paragraph 28 are denied.
5. In response to paragraph 29, this defendant admits that at times, Fortino Garcia, for valuable consideration, transported migrant or seasonal agricultural workers. Whether Fortino Garcia is considered a farm labor contractor under the AWPA is a conclusion of law to which no response is required.
6. This defendant lacks knowledge or information sufficient to form a belief as to the averments of paragraph 30.
7. In response to paragraph 31, this defendant admits that it owned or operated agricultural facilities on Virginia's Eastern Shore, states that no response is required to the allegation that it is an agricultural employer under the AWPA as that calls for a conclusion of law, and denies that it employs or transports migrant or seasonal agricultural workers.
8. This defendant lacks knowledge or information sufficient to form a belief as to the averments of paragraph 32 regarding defendant Fortino Garcia and denies the averment that at all times relevant Tovar-Guzman was acting as an employee and/or agent of Kuzzens.
9. The averments of paragraphs 33 - 51 are not directed to this defendant and require no response of this defendant.
10. The averments of paragraphs 53 and 54 are admitted.
11. In response to paragraph 55, this defendant admits that it owns farms in Beaufort, South Carolina and in or near Exmore, Virginia but denies the remaining averments.
12. The averments of paragraph 56 are admitted.
13. In response to paragraph 57, this defendant admits that Six L's has subsidiaries, that LFC Agricultural Services, Inc., uses the fictitious name Lipman and works to harvest crops.

The website referred to in paragraph 57 is the best evidence of its content. To the extent the averments of paragraph 57 are inconsistent therewith, they are denied.

14. This defendant denies the averments of paragraph 58.

15. In response to paragraph 59, this defendant admits that seasonal agricultural workers pick tomatoes at its farms in South Carolina and Virginia. The harvest dates vary but generally the tomatoes are harvested in South Carolina in June and in Virginia beginning in July. This defendant denies that it employs the seasonal workers who pick the tomatoes at its farms in Virginia and South Carolina.

16. In response to paragraph 60, this defendant states that Fortino Garcia and Sons Harvesting, Inc. is a farm labor contractor which provides agricultural labor in planting, farming, harvesting, packing, processing and/or distribution from time to time in accordance with an independent contractor agreement with LFC Agricultural Services, Inc. LFC Agricultural Services, Inc.'s Human Resources Department has methods for employee termination. David Garcia is a supervisor employed by LFC Management Services, Inc., who, in consultation with others, determines when harvest begins on the farms in South Carolina and Virginia.

17. The averments of paragraphs 61 - 63 are denied.

18. This defendant lacks knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 64.

19. The averments of paragraph 65 - 69 are denied.

20. In response to paragraph 70, this defendant admits that plaintiffs demand judgment as set forth therein but deny that plaintiffs are entitled to judgment as demanded.

21. The Court has sustained a motion to dismiss Count IV (paragraphs 71 - 78) of the

second amended complaint and therefore no response is required.

### **Defenses**

1. This defendant adopts and incorporates the defenses stated in its answer to the amended complaint previously filed.

/s/

---

Brian N. Casey, Esquire  
Virginia State Bar No. 26710  
James E. Brydges, Jr., Esquire  
Virginia State Bar No. 4420  
Attorneys for Kuzzens, Inc.  
TAYLOR WALKER, P.C.  
Post Office Box 3490  
Norfolk, Virginia 23514-3490  
(757) 625-7300  
(757) 625-1504 (fax)  
[bcasey@taylorwalkerlaw.com](mailto:bcasey@taylorwalkerlaw.com)

### **CERTIFICATE OF SERVICE**

I hereby certify that on the 17<sup>th</sup> day of July, 2013, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

Patrick Brogan, Esquire  
Virginia State Bar No. 25568  
Bryan K. Meals, Esquire  
Virginia State Bar No. 40184  
Attorneys for Kathleen Kitterman, Anna Cronin, Corrie Ball,  
Marvin Ball, Margaret Brogan and Evan Jones  
DAVEY & BROGAN, P.C.  
101 Granby Street, Suite 300  
Norfolk, Virginia 23514-3188  
(757) 622-0100  
(757) 622-4924 (fax)  
[pbrogan@daveybroganpc.com](mailto:pbrogan@daveybroganpc.com)  
[bmeals@daveybroganpc.com](mailto:bmeals@daveybroganpc.com)

James R. Jebo, Esquire  
Virginia State Bar No. 48418

Michael E. Harman, Esquire  
Virginia State Bar No. 16813  
Lynne J. Blain, Esquire  
Virginia State Bar No. 23719  
Attorneys for Claudio Tovar-Guzman and  
Fortino Garcia and Sons Harvesting, Inc.  
**HARMAN, CLAYTOR, CORRIGAN & WELLMAN**  
Post Office Box 70280  
Richmond, Virginia 23255  
(804) 747-5200  
(804) 747-6085 (fax)  
[jjebo@hccw.com](mailto:jjebo@hccw.com)  
[mharman@hccw.com](mailto:mharman@hccw.com)  
[lplain@hccw.com](mailto:lplain@hccw.com)

Todd M. Fiorella, Esquire  
Virginia State Bar No. 30238  
Attorney for USAA  
**FRAIM & FIORELLA, P.C.**  
150 Boush Street, Suite 601  
Norfolk, Virginia 23510  
(757) 227-5900  
(757) 227-5901 (fax)  
[tmfiorella@ff-legal.com](mailto:tmfiorella@ff-legal.com)

H. Robert Yates, III, Esquire  
Virginia State Bar No. 35617  
Alexander K. Page, Esquire  
Virginia State Bar No. 78894  
Attorneys for ACE American Insurance Company  
**LeCLAIR RYAN**  
123 East Main Street, Eighth Floor  
Charlottesville, Virginia 22902  
(434) 245-3444  
(434) 296-0905 (fax)  
[robert.yates@leclairryan.com](mailto:robert.yates@leclairryan.com)  
[alexander.page@leclairryan.com](mailto:alexander.page@leclairryan.com)

/s/

---

Brian N. Casey, Esquire  
Virginia State Bar No. 26710  
James E. Brydges, Jr., Esquire  
Virginia State Bar No. 4420  
Attorneys for Kuzzens, Inc.  
TAYLOR WALKER, P.C.  
Post Office Box 3490  
Norfolk, Virginia 23514-3490  
(757) 625-7300  
(757) 625-1504 (fax)  
[bcasey@taylorwalkerlaw.com](mailto:bcasey@taylorwalkerlaw.com)  
[jbrydges@taylorwalkerlaw.com](mailto:jbrydges@taylorwalkerlaw.com)